

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Edward Tsigel	Team: Squad #17	CCRB Case #: 202206614	<input checked="" type="checkbox"/> Force <input type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury
Incident Date(s) Sunday, 08/21/2022 12:40 PM, Wednesday, 09/28/2022 8:40 AM, Wednesday, 09/28/2022 9:30 AM, Thursday, 09/29/2022 3:45 PM	Location of Incident: § 87(2)(b)	18 Mo. SOL 2/21/2024	Precinct: 76
Date/Time CV Reported Fri, 09/30/2022 4:45 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 09/30/2022 4:45 PM

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Fernando Lopes	02502	947183	076 DET
2. PO Daniel Rijos	24105	953311	076 PCT
3. PO Daniela Gavidia	06753	972656	076 PCT
4. SGT Jinchen Chen	00149	934622	PSA 1
5. SGT Marisol Abreu	02721	940184	076 PCT
6. PO Faisal Zahroof	18728	970335	076 PCT
7. PO Elexis Singletary	22379	962808	076 PCT
8. PO Benedetto Calcaterra	27055	971854	076 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Lizbeth Leonpenafiel	09747	972063	076 PCT
2. PO Nicole Perez	23877	963205	076 PCT
3. PO Sarwar Azad	22646	971812	076 PCT
4. PO Kevin Spiewak	13196	962117	076 PCT
5. PO Chee Lee	19524	942048	PSA 1
6. PO Hakan Oguz	01556	972836	PSA 1
7. PO Harry Sepulveda	26395	946234	076 PCT

Officer(s)	Allegation	Investigator Recommendation
A. PO Faisal Zahroof	Force: On August 21, 2022, at § 87(2)(b) in Brooklyn, Police Officer Faisal Zahroof used physical force against § 87(2)(b)	§ 87(2)(b)
B. SGT Marisol Abreu	Abuse: On August 21, 2022, Sergeant Marisol Abreu entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
C. SGT Marisol Abreu	Abuse: On August 21, 2022, Sergeant Marisol Abreu searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
D. SGT Marisol Abreu	Abuse: On August 21, 2022, at § 87(2)(b) in Brooklyn, Sergeant Marisol Abreu failed to provide § 87(2)(b) with a business card.	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
E.PO Elexis Singletary	Abuse: On August 21, 2022, at § 87(2)(b) in Brooklyn, Police Officer Elexis Singletary failed to provide § 87(2)(b) with a business card.	
F.PO Benedetto Calcaterra	Abuse: On August 21, 2022, at § 87(2)(b) in Brooklyn, Police Officer Benedetto Calcaterra failed to provide § 87(2)(b) with a business card.	
§ 87(2)(g), § 87(4-b)		
H.PO Daniel Rijos	Abuse: On September 28, 2022, at § 87(2)(b) in Brooklyn, Police Officer Daniel Rijos stopped § 87(2)(b)	
I.PO Daniela Gavidia	Abuse: On September 28, 2022, at § 87(2)(b) in Brooklyn, Police Officer Daniela Gavidia stopped § 87(2)(b)	
J.PO Daniel Rijos	Force: On September 28, 2022, at § 87(2)(b) in Brooklyn, Police Officer Daniel Rijos used physical force against § 87(2)(b)	
K.PO Daniel Rijos	Abuse: On September 28, 2022, Police Officer Daniel Rijos entered § 87(2)(b) in Brooklyn.	
L.PO Daniela Gavidia	Abuse: On September 28, 2022, Police Officer Daniela Gavidia entered § 87(2)(b) in Brooklyn.	
M.PO Daniel Rijos	Abuse: On September 28, 2022, at § 87(2)(b) in Brooklyn, Police Officer Daniel Rijos refused to provide his shield number to § 87(2)(b)	
N.PO Daniela Gavidia	Abuse: On September 28, 2022, at § 87(2)(b) in Brooklyn, Police Officer Daniela Gavidia refused to provide her shield number to § 87(2)(b)	
O.PO Daniel Rijos	Abuse: On September 28, 2022, at § 87(2)(b) in Brooklyn, Police Officer Daniel Rijos failed to provide § 87(2)(b) with a business card.	
P.PO Daniela Gavidia	Abuse: On September 28, 2022, at § 87(2)(b) in Brooklyn, Police Officer Daniela Gavidia failed to provide § 87(2)(b) with a business card.	
§ 87(2)(g), § 87(4-b)		
R.SGT Jinchen Chen	Abuse: On September 28, 2022, Sergeant Jinchen Chen entered § 87(2)(b) in Brooklyn.	
S.DT3 Fernando Lopes	Abuse: On September 29, 2022, Detective Fernando Lopes entered § 87(2)(b) in Brooklyn.	

Case Summary

On September 30, 2022, § 87(2)(b) filed this complaint on the CCRB website.

On August 21, 2022, at approximately 12:40 PM, § 87(2)(b) called 911 and reported that § 87(2)(b) grabbed and threatened her daughter (unknown name) with a dog at § 87(2)(b) in Brooklyn. Sergeant Marisol Abreu, Police Officer Faisal Zahroof, Police Officer Harry Sepulveda, Police Officer Elexis Singletary, Police Officer Benedetto Calcaterra, and Police Officer Sarwar Azad, all of the 76th Precinct, responded to § 87(2)(b) residence at § 87(2)(b). PO Zahroof allegedly pushed § 87(2)(b) (**Allegation A – Force – § 87(2)(g)**). All of the officers entered § 87(2)(b) apartment (**Allegation B – Abuse of Authority – § 87(2)(g)**). Sgt. Abreu searched § 87(2)(b) apartment (**Allegation C – Abuse of Authority – § 87(2)(g)**). Sgt. Abreu, PO Singletary, and PO Calcaterra failed to provide § 87(2)(b) with a business card (**Allegations D to F – Abuse of Authority – § 87(2)(g)**).
§ 87(2)(g), § 87(4-b)

On September 28, 2022, at approximately 8:40 AM, Police Officer Daniel Rijos and Police Officer Daniela Gavidia, both of the 76th Precinct, stopped § 87(2)(b) in front of § 87(2)(b) in Brooklyn (**Allegation H – Abuse of Authority – § 87(2)(g)** and **Allegation I – Abuse of Authority – § 87(2)(g)**). PO Rijos allegedly pushed § 87(2)(b) (**Allegation J – Force – § 87(2)(g)**). PO Rijos and PO Gavidia entered § 87(2)(b) apartment (**Allegation K – Abuse of Authority – § 87(2)(g)** and **Allegation L – Abuse of Authority – § 87(2)(g)**). PO Rijos and PO Gavidia refused to provide their shield numbers to § 87(2)(b) (**Allegation M – Abuse of Authority – § 87(2)(g)** and **Allegation N – Abuse of Authority – § 87(2)(g)**). PO Rijos and PO Gavidia failed to provide § 87(2)(b) with a business card (**Allegation O – Abuse of Authority – § 87(2)(g)** and **Allegation P – Abuse of Authority – § 87(2)(g)**).
§ 87(2)(g), § 87(4-b)

Sergeant Jinchun Chen of PSA 1 arrived at the scene and entered § 87(2)(b) apartment (**Allegation R – Abuse of Authority – § 87(2)(g)**).

On September 29, 2022, at 5:03 PM, Detective Fernando Lopes allegedly entered § 87(2)(b) apartment while she was not home (**Allegation S – Abuse of Authority – § 87(2)(g)**).

This case was originally assigned to Supervising Investigator Rachel Adler and was reassigned to Investigator Edward Tsigel.

There were no arrests made or summonses issued as a result of these incidents.

The investigation received six Body Worn Camera (BWC) videos (BR 09) of the incident on August 21, 2022. The investigation also received 13 BWC videos (BR 24) and four NYCHA surveillance videos (BR 32) of the incident on September 28, 2022. There was no BWC footage of the incident on September 29, 2022. There is no additional video footage of these incidents.

Findings and Recommendations

Allegation (A) Force: On August 21, 2022, at § 87(2)(b) in Brooklyn, Police Officer Faisal Zahroof used physical force against § 87(2)(b)

Allegation (B) Abuse of Authority: On August 21, 2022, Sergeant Marisol Abreu entered § 87(2)(b) in Brooklyn.

Allegation (C) Abuse of Authority: On August 21, 2022, Sergeant Marisol Abreu searched § 87(2)(b) in Brooklyn.

Allegation (D) Abuse of Authority: On August 21, 2022, at § 87(2)(b) in Brooklyn, Sergeant Marisol Abreu failed to provide § 87(2)(b) with a business

card.

Allegation (E) Abuse of Authority: On August 21, 2022, at § 87(2)(b) in Brooklyn, Police Officer Elexis Singletary failed to provide § 87(2)(b) with a business card.

Allegation (F) Abuse of Authority: On August 21, 2022, at § 87(2)(b) in Brooklyn, Police Officer Benedetto Calcaterra failed to provide § 87(2)(b) with a business card.

It is undisputed that on August 21, 2022, § 87(2)(b) called 911 and reported that § 87(2)(b) grabbed and threatened her daughter with a dog. Sgt. Abreu, PO Zahroof, PO Sepulveda, PO Singletary, PO Calcaterra, and PO Azad responded and entered § 87(2)(b) apartment. PO Singletary, PO Calcaterra, and Sgt. Abreu searched § 87(2)(b) apartment for a dog, did not find one, and left the apartment. Sgt. Abreu, PO Singletary, and PO Calcaterra did not provide § 87(2)(b) a business card.

§ 87(2)(b) (BR 01-03) stated that she was home alone when she heard a knock on her door, opened the door, and saw § 87(2)(b) and multiple officers standing in the hallway. She stated that § 87(2)(b) falsely alleged that § 87(2)(b) had threatened her daughter. § 87(2)(b) took one step out of her apartment and PO Zahroof pushed her back into the apartment. Immediately after, the officers entered her apartment without asking for permission. § 87(2)(b) did not say or do anything to give the officers permission to enter the apartment. PO Singletary asked § 87(2)(b) to search the apartment for the dog and § 87(2)(b) said, “Go ahead, search for the dog.” Officers then searched her apartment and entered every room before leaving.

At timestamp 2:10 of Sgt. Abreu’s BWC video (BR 09), Sgt. Abreu and the other officers arrive to the building and speak to § 87(2)(b) who tells them that § 87(2)(b) pushed and threatened her ten-year-old daughter with a dog. At 2:35, § 87(2)(b) leads the officers to § 87(2)(b) apartment and knocks on the door. § 87(2)(b) answers the door and begins to argue with § 87(2)(b) about the alleged incident with her daughter. § 87(2)(b) also added that § 87(2)(b) groped her daughter. At 3:30, § 87(2)(b) walks away from the apartment and § 87(2)(b) tells the officers to, “Come in.” § 87(2)(b) exits her apartment and attempts to walk towards § 87(2)(b) PO Zahroof places his body and arms in front of § 87(2)(b) to prevent her from further approaching § 87(2)(b). § 87(2)(b) briefly bumps into PO Zahroof and then turns around and reenters her apartment. Neither PO Zahroof nor any other officer pushes or uses any force against § 87(2)(b). At 3:43, § 87(2)(b) walks into her apartment while pointing inside and saying, “Look.” Between 3:45 and 7:25, PO Sepulveda and Sgt. Abreu follow § 87(2)(b) into her apartment and § 87(2)(b) explains that she did not do what § 87(2)(b) alleged and that she has not had a dog for two weeks. At 7:25, PO Sepulveda and Sgt. Abreu exit the apartment and walk down the hall to speak with other officers and § 87(2)(b). Sgt. Abreu instructs PO Calcaterra to stand in the doorway and to hold § 87(2)(b) door open and he does so. Between 7:35 and 10:40, Sgt. Abreu speaks to the other officers in the hallway. The officers state that § 87(2)(b) denies having a dog, the apartment does not smell like there is a dog, and if there was a dog then it would have “gone crazy.” § 87(2)(b) brings her daughter to the first floor, who restates the allegations mentioned before to the officers. Her daughter walks to § 87(2)(b) apartment and confirms that § 87(2)(b) was the one who threatened her. At 10:40, PO Calcaterra is holding the door while all of the officers are speaking in the hallway. § 87(2)(b) yells, “Come in, y’all could come all the way in.” Sgt. Abreu tells the officers, “There’s no dog, take a look, walk in, there’s nothing, no dog.” PO Singletary walks into the apartment and asks § 87(2)(b) if she could take a look in the apartment. § 87(2)(b) responds, “Run through this bitch.” PO Singletary turns around and looks at Sgt. Abreu in the hallway. Sgt. Abreu gestures her hand into the apartment and says, “Go, go now,” and then also enters the apartment. Between 10:55 and 11:55, Sgt. Abreu, PO Singletary, and PO Calcaterra walk through and search through all of the

rooms in the apartment and do not find a dog. Sgt. Abreu leaves the apartment and does not provide § 87(2)(b) with a business card.

PO Sepulveda's BWC video (BR 09) is consistent with Sgt. Abreu's BWC video. Timestamp 2:53 to 3:15 of his BWC video provides a clearer angle of § 87(2)(b) telling the officers to "come in" and pointing into her apartment while saying, "Look."

Between 8:30 and 30:50 of PO Singletary's BWC video (BR 09), PO Singletary and additional officers walk in and out of § 87(2)(b) apartment multiple times while speaking to her about the allegations and preparing a report for the alleged harassment. Between 30:50 and 37:15, PO Singletary and PO Calcaterra go to § 87(2)(b) § 87(2)(b) and prepare a report for the alleged harassment. All additional BWC footage (BR 09) is consistent with Sgt. Abreu's, PO Sepulveda's, and PO Singletary's BWC videos. None of the BWC videos show PO Singletary or PO Calcaterra providing § 87(2)(b) a business card.

PO Sepulveda (BR 04, 05) denied seeing PO Zahroof push § 87(2)(b). He stated that § 87(2)(b) gave him consent to enter the apartment by telling him to "come in" and by pointing into her apartment while telling him to "look." He entered the apartment to look at what she wanted to show him and to investigate the allegations which § 87(2)(b) made against § 87(2)(b).

Sgt. Abreu (BR 06) denied that PO Zahroof or any other officer pushed § 87(2)(b). Sgt. Abreu entered § 87(2)(b) apartment to make sure that the other officers were safe due to a dog allegedly being inside the apartment. Sgt. Abreu stated that the officers had to obtain permission to enter the apartment, but she did not do so because she felt that there were exigent circumstances due to a dog allegedly being present. She stated that although there was no indication that there was a dog inside the apartment, she still conducted a protective sweep of the apartment to determine whether there was a dog for the officers' safety. She stated that she was required to obtain permission from § 87(2)(b) to search the apartment but did not do so because there was a lot of screaming and cursing going on at the time. She did not hear any other officers ask for permission to search the apartment. Sgt. Abreu stated that she had to provide § 87(2)(b) with a business card but did not do so because there was a lot going on and she did not think to do so in the moment.

PO Calcaterra (BR 07) denied seeing PO Zahroof push § 87(2)(b). He stated that Sgt. Abreu initially instructed him to hold the door to the apartment open and he did so. Sgt. Abreu did not instruct him to search the apartment; however, § 87(2)(b) gave the officers permission to search it. He did not clarify exactly how § 87(2)(b) provided permission or what she said. He did not know if anyone asked § 87(2)(b) for permission to search the apartment. None of the officers advised § 87(2)(b) that she could refuse the officers searching the apartment. PO Calcaterra did not provide his business card to § 87(2)(b) because she did not ask for one and she was not considered to be stopped, thus he did not believe it was required to provide one to her.

PO Singletary (BR 08) denied seeing PO Zahroof push § 87(2)(b). She stated that Sgt. Abreu told her to enter and search the apartment for a dog without initially asking for § 87(2)(b) permission to do so. However, once PO Singletary entered the apartment, she also asked § 87(2)(b) to search the apartment and she gave the officers permission to do so. PO Singletary stated that she did not provide her business card to § 87(2)(b) because she was not part of the responding unit, because officers were present when she left, and because she did not believe § 87(2)(b) needed one.

PO Zahroof was not interviewed because the investigation was able to make a determination without his statement.

The CCRB received negative results for a Consent to Search Report request regarding this incident (BR 10).

BWC footage captures the entirety of § 87(2)(b) interactions with the officers. Although PO Zahroof prevents § 87(2)(b) from getting past him and his arm contacts § 87(2)(b).

§ 87(2)(b) BWC showed that he did not push § 87(2)(b) § 87(2)(g)

People v. Brown, 234 A.D.2d 211 (BR 11), ruled that officers can legally enter a residence when they are provided consent to enter, and that consent can be established by conduct, such as leaving a door open and then walking away, as well as words.

Sgt. Abreu was the supervisor during the incident and was in charge of the entry into the apartment, therefore this allegation is being pled against her. § 87(2)(g)

As per Payton v. New York, 445 U.S. 573 (1980) (BR 12) searches and seizures inside a home without a warrant are presumptively unreasonable. Absent exigent circumstances or consent, a warrantless entry and search is unconstitutional even when a felony has been committed and there is probable cause to believe that incriminating evidence will be found within.

In People v. Gonzalez, 39 N.Y.2d 122 (BR 13), the court held that consent to search is voluntary when it is a true act of the will, an unequivocal product of an essentially free and unconstrained choice. Voluntariness is incompatible with official coercion, actual or implicit, overt, or subtle.

NYC Administrative Code 14-173 (BR 14) states officers must articulate, using plain and simple language delivered in a non-threatening manner, that the person who is the subject of a search is being asked to voluntarily, knowingly, and intelligently consent to such search, and explaining that such search will not be conducted if such person refuses to provide consent to such search. Officers must document the time, location, and date of such search, and the apparent race/ethnicity, gender, and age of the person who was the subject of such search, and such officer's name, precinct, and shield number.

Sgt. Abreu was the supervisor during the incident and instructed officers to search the apartment, therefore this allegation is being pled against her. Sgt. Abreu did not obtain consent from § 87(2)(b) to conduct a search of her apartment. Although PO Singletary asked § 87(2)(b) to search the apartment and she provided consent to do so, none of the officers advised § 87(2)(b) that she could refuse the search; § 87(2)(g)

Although Sgt. Abreu testified that she entered based on exigent circumstances, the possibility of a dog inside the home does not satisfy the factors for exigent circumstances. Furthermore, the officers were investigating § 87(2)(b) complaint of pushing, groping, and menacing with a dog, which are not egregiously violent in nature and there were no conversations about § 87(2)(b) being armed. § 87(2)(g)

NYPD Administrative Guide 304-11 (BR 15) states that officers are required to offer a business card to any individual who is a subject of a home search, except when there is an arrest made or summons issued as a result.

Sgt. Abreu, PO Singletary, and PO Calcaterra searched § 87(2)(b) apartment and did not offer her a business card. There was no arrest made or summons issued. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

Allegation (H) Abuse of Authority: On September 28, 2022, at § 87(2)(b) in Brooklyn, Police Officer Daniel Rijos stopped § 87(2)(b)

Allegation (I) Abuse of Authority: On September 28, 2022, at § 87(2)(b) in Brooklyn, Police Officer Daniela Gavidia stopped § 87(2)(b)

Allegation (J) Force: On September 28, 2022, at § 87(2)(b) in Brooklyn, Police Officer Daniel Rijos used physical force against § 87(2)(b)

Allegation (K) Abuse of Authority: On September 28, 2022, Police Officer Daniel Rijos entered § 87(2)(b) in Brooklyn.

Allegation (L) Abuse of Authority: On September 28, 2022, Police Officer Daniela Gavidia entered § 87(2)(b) in Brooklyn.

Allegation (M) Abuse of Authority: On September 28, 2022, at § 87(2)(b) in Brooklyn, Police Officer Daniel Rijos refused to provide his shield number to § 87(2)(b).

Allegation (N) Abuse of Authority: On September 28, 2022, at § 87(2)(b) in Brooklyn, Police Officer Daniela Gavidia refused to provide her shield number to § 87(2)(b).

Allegation (O) Abuse of Authority: On September 28, 2022, at § 87(2)(b) in Brooklyn, Police Officer Daniel Rijos failed to provide § 87(2)(b) with a business card.

Allegation (P) Abuse of Authority: On September 28, 2022, at § 87(2)(b) in Brooklyn, Police Officer Daniela Gavidia failed to provide § 87(2)(b) with a business card.

§ 87(2)(b) (BR 01-03) stated that on September 28, 2022, she was walking home at approximately 8:40 AM, when she saw § 87(2)(b) speaking to PO Rijos and PO Gavidia in front of § 87(2)(b). She approached them and heard § 87(2)(b) tell them that she had an order of protection against § 87(2)(b). § 87(2)(b) told the officers that § 87(2)(b) was lying and attempted to leave. PO Rijos and PO Gavidia surrounded her and prevented her from leaving. She said she wanted to leave, and PO Rijos told her she could not. § 87(2)(b) attempted to leave several times and each time, PO Rijos pushed her backwards and told her to stay there. PO Rijos asked § 87(2)(b) for her ID and she told the officers to follow her to her apartment to get it. PO Rijos and PO Gavidia followed her and entered her apartment without § 87(2)(b) providing consent for them to enter or them asking for permission to enter. The officers ran her name and determined that § 87(2)(b) did not have an order of protection against her. § 87(2)(b) recorded a part of her interaction with PO Rijos and PO Gavidia on Facebook live. The officers then left the apartment. § 87(2)(b) did not provide PO Rijos' or PO Gavidia's names or shield numbers during her CCRB statement. § 87(2)(b) did not provide the video recording to the investigation and did not state whether it captured PO Rijos' and PO Gavidia's names or shield numbers.

PO Rijos (BR 18) stated that he and PO Gavidia were assigned to a fixed post at § 87(2)(b) when § 87(2)(b) approached them and said that § 87(2)(b) violated an order of protection and was harassing them. § 87(2)(b) pointed out § 87(2)(b) who was approaching them from approximately 100 feet away. PO Rijos called § 87(2)(b) over to

speak with her. During his CCRB interview, PO Rijos stated that § 87(2)(b) was free to decline to walk over and could have left the situation at any time. § 87(2)(b) voluntarily walked over to the officers. § 87(2)(b) and § 87(2)(b) began to yell at each other, and § 87(2)(b) attempted to hit § 87(2)(b) with her fist. PO Rijos grabbed her wrist and stepped in between her and § 87(2)(b) to prevent § 87(2)(b) from hitting § 87(2)(b). PO Rijos and PO Gavidia separated § 87(2)(b) and § 87(2)(b) from each other to prevent a physical altercation. PO Rijos stated that § 87(2)(b) was not considered stopped and was free to leave at any point. Neither he nor PO Gavidia told § 87(2)(b) that she was not permitted to leave at any point during the incident. PO Rijos denied that he or PO Gavidia pushed § 87(2)(b) or used any force against her. § 87(2)(b) went to her apartment and the officers followed her in because they assumed that she would feel more comfortable speaking to them in the privacy of the apartment instead of the hallway. The officers did not ask for permission to enter because she let them inside by escorting them to her apartment and holding the door open for them. § 87(2)(b) gave him her ID without him asking for it. PO Rijos ran her name on his phone and determined that § 87(2)(b) did not have any orders of protection against her. PO Rijos stated that § 87(2)(b) asked for his shield number, and he shifted his body towards her to indicate that it was on his shield which was visible to her. § 87(2)(b) took out her phone and appeared to write something down. PO Rijos assumed that she was writing down his shield number and thus did not verbally provide his shield number to her. PO Rijos told § 87(2)(b) to avoid § 87(2)(b) since she makes false allegations against her, and the officers left the apartment. He did not provide his business card to § 87(2)(b) because she did not ask for one and he did not believe he was required to provide one.

§ 87(2)(g)

At 0:00 of PO Rijos' first BWC video (BR 20), PO Rijos and PO Gavidia are speaking with § 87(2)(b) and her daughter outside of § 87(2)(b). At 00:20, § 87(2)(b) approaches the officers from approximately 50 feet away. PO Rijos waves his hand for her to come to him and he walks towards § 87(2)(b). § 87(2)(b) appears to be yelling at § 87(2)(b) as she approaches. PO Rijos and PO Gavidia surround § 87(2)(b) who continues to yell at § 87(2)(b). At 0:45, PO Rijos places his arm in front of § 87(2)(b) and touches her shoulder. At 0:55, § 87(2)(b) takes a step towards § 87(2)(b) and PO Gavidia extends her arm with her palms facing out and makes contact with § 87(2)(b) shoulder. Neither PO Rijos nor PO Gavidia push § 87(2)(b). At 1:00, PO Rijos says that since § 87(2)(b) is making accusations, the officers have to follow up and want to make sure that she and § 87(2)(b) are good. § 87(2)(b) explains that § 87(2)(b) allegations are false. PO Rijos explains that they have to make sure they are not true. At 3:35, PO Rijos tells her to "sit tight" while he gets his phone. PO Rijos tells PO Gavidia to not leave § 87(2)(b). PO Rijos tells § 87(2)(b) that they will go into her building to speak to her. Between 4:20 and 5:00, § 87(2)(b) escorts PO Rijos and PO Gavidia to her apartment. At 5:00, § 87(2)(b) opens her door and walks into the apartment. She holds the door open until the officers reach the door. She lets go of the door once PO Rijos touches the door. PO Rijos and PO Gavidia walk into § 87(2)(b) apartment. At 5:15, § 87(2)(b) requests PO Rijos' and PO Gavidia's shield numbers. PO Rijos responds, "Ok, that's fine," however neither PO Rijos nor PO Gavidia verbally provide their shield number to § 87(2)(b). PO Rijos does not appear to shift his body towards § 87(2)(b) and she does not appear to look at his badge. At 5:58, § 87(2)(b) goes through her phone. She does not make any additional requests for either officer's shield numbers. Between 5:30 and 20:20, PO Rijos and PO Gavidia check whether there is an order of protection against § 87(2)(b). They determine that there is no order of protection, and they leave the scene. Neither PO Rijos nor PO Gavidia provide their business cards to § 87(2)(b). PO Gavidia's first BWC video (BR 21) is consistent with PO Rijos' first BWC video. NYPD Patrol Guide Procedure 212-11 (BR 22) states that a level three encounter is any

encounter between a civilian and a uniformed member of the service in which a reasonable person would not feel free to disregard the officer and walk away. Additionally, it states if an officer has reasonable suspicion that an individual has committed a crime, they may conduct a level three stop and detain the person for the purpose of conducting a criminal investigation. The officer may ask accusatory or pointed questions and detain the person while an expeditious investigation is conducted to determine if there is probable cause to arrest the person.

Although PO Rijos stated that § 87(2)(b) was free to leave her encounter with the officers, BWC footage shows that the officers' intended to investigate the allegations that § 87(2)(b) made against § 87(2)(b). The officers surrounded her, told her to stay put, and told her that they needed to make sure the allegations were not true; § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

People v. Brown, 234 A.D.2d 211 (BR 11), ruled that officers can legally enter a residence when they are provided consent to enter, and that consent can be established by conduct, such as leaving a door open and then walking away, as well as words.

Although § 87(2)(b) stated that she did not provide consent for the officers to enter her apartment, BWC footage shows that § 87(2)(b) escorted the officers to her apartment and held the door open for them as they approached her apartment. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Patrol Guide procedure 203-09 (BR 23) states that officers are required to state their shield number courteously and clearly to anyone who requests it.

Allegations M and N were not alleged and are being pled based on BWC footage. It is undisputed that PO Rijos and PO Gavidia did not verbally provide their shield numbers to § 87(2)(b) upon her request. While PO Rijos stated that he showed his badge to § 87(2)(b) he did not shift his body towards her, and she did not look at his badge. § 87(2)(b) was seen going on her phone approximately 40 seconds after her request. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

NYPD Administrative Guide 304-11 (BR 15) states that a level three stop is where an officer has a reasonable suspicion that the person stopped has committed, is committing, or is about to commit a crime and where a reasonable person would not feel free to end the encounter. It states that when an officer conducts a level three stop, a frisk, or a vehicle search, which does not result in an arrest being made or summons being issued, then the officer must offer a business card to the person in a professional manner upon the conclusion of the law enforcement activity.

PO Rijos and PO Gavidia stopped § 87(2)(b) and there was no arrest made or summons issued as a result of the incident. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

BWC footage shows that PO Gavidia stopped § 87(2)(b) entered § 87(2)(b) apartment, refused to provide her shield number to § 87(2)(b) and failed to provide § 87(2)(b) with a business card. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

Allegation (R) Abuse of Authority: On September 28, 2022, Sergeant Jinchen Chen entered § 87(2)(b) in Brooklyn.

§ 87(2)(b) (BR 01-03) stated that approximately 20 minutes after PO Rijos and PO Gavidia left her apartment, additional officers came to her apartment and knocked on her door. She opened the door and the officers entered the apartment without asking for or obtaining permission to do so. § 87(2)(b) explained to them that officers were just at her apartment a few minutes prior. She showed the officers the video she took of PO Rijos and PO Gavidia and the officers left. § 87(2)(b) did not provide the video recording to the investigation.

Between 0:00 and 2:25 of Sgt. Chen's BWC video (BR 24), Sgt. Chen arrived at the scene and went to the fifth floor. Between 2:25 and 12:00, Sgt. Chen and additional officers speak to § 87(2)(b) at her apartment and then walk down to the lobby. § 87(2)(b) explains that § 87(2)(b) menaced her with a knife. At 12:00, Sgt. Chen sees § 87(2)(b) looking at him from her apartment door on the first floor and he approaches her. § 87(2)(b) tells Sgt. Chen that officers just left her apartment, and they called § 87(2)(b) a liar. At 12:23, § 87(2)(b) waves her hand towards her apartment and says, "Ya'll could come in," while stepping into her apartment backwards. At 12:28, Sgt. Chen stops in front of § 87(2)(b) door in the hallway and she further insists, "Come in." Sgt. Chen and additional officers enter the apartment and speak to § 87(2)(b) about the allegations against her. At 16:30, the officers leave the apartment. All additional BWC videos (BR 24) are consistent with Sgt. Chen's BWC video.

Sgt. Chen was not interviewed because the investigation was able to make a determination without his statement.

People v. Gonzalez, 39 N.Y.2d 122 (1976) (BR 13), states that consent to enter is voluntary "when it is a true act of the will, an unequivocal product of an essentially free and unconstrained choice." If valid consent is obtained, then there is no requirement for probable cause to enter.

Sgt. Chen was the supervisor during the incident and led the entry, therefore this allegation is being pled against him. BWC footage shows that § 87(2)(b) voluntarily provided consent for Sgt. Chen and the additional officers to enter her apartment by telling them to come in while stepping further inside. § 87(2)(g)

Allegation (S) Abuse of Authority: On September 29, 2022, Detective Fernando Lopes entered § 87(2)(b) in Brooklyn.

§ 87(2)(b) (BR 01-03) stated that on September 29, 2022, she left her apartment at 7:00 AM and locked her door. When she returned home later that day her door was unlocked. She found Det. Lopes' business card in the middle of her living room floor. § 87(2)(b) door does not have a mail slot; however, it is possible to slip a business card in the space beneath the door. § 87(2)(b) believed that Det. Lopes entered her apartment to leave his business card because she did not believe it was possible for the business card to be that far inside the apartment

otherwise. § 87(2)(b) did not mention whether anyone else had keys to her apartment. She did not mention seeing any damage caused to her door. She called Det. Lopes and he asked her to turn herself regarding a warrant. During their phone call they did not speak about whether Det. Lopes entered her apartment.

Det. Lopes (BR 25) stated that on September 29, 2022, he established probable cause to arrest § 87(2)(b) due to a complaint of her menacing § 87(2)(b) with a knife. He went to § 87(2)(b) home to arrest her, but she was not there. Det. Lopes slid his business card under the apartment door. He used enough force for the card to fully enter the apartment without any part of it protruding from under the door. He left the apartment and returned to the stationhouse. He denied that he entered or attempted to enter § 87(2)(b) apartment at any point. He did not know whether the door was locked because he did not attempt to open it. At a later unknown time that day, Det. Lopes received a call from § 87(2)(b) § 87(2)(b) asked Det. Lopes why he was inside her apartment, and he told her that he did not enter her apartment.

A probable cause to arrest I-card § 87(2)(b) (BR 26) for § 87(2)(b) was generated by Det. Lopes on September 29, 2022 for menacing in the second degree.

The movement log for the 76th Precinct Detective Squad (BR 27) shows that on September 29, 2022, Det. Lopes went to § 87(2)(b) apartment at 5:03 PM and returned to the stationhouse at 6:13 PM

The investigation was unable to obtain DD5 entries for Det. Lopes' case because the case was still active during the CCRB's investigation (BR 28).

A screen capture of PO Sepulveda's BWC shows that the flooring in § 87(2)(b) apartment are tiles and was a smooth surface (BR 33).

§ 87(2)(b) stated that she locked her door when she left her apartment in the morning and given that § 87(2)(b) did not allege any damage to the door or lock and the fact that there is space under the door and the floor is laid with tiles, the investigation credited Det. Lopes' account that he slid the card under the door leading § 87(2)(b) to finding the card inside her apartment. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
- § 87(2)(b)
- Police Officer Faisal Zahroof has been a member-of-service for two years and this is the first CCRB complaint to which he has been a subject.
- Sergeant Marisol Abreu has been a member-of-service for 17 years and this is the first CCRB complaint to which she has been a subject.
- Police Officer Elexis Singletary has been a member-of-service for six years and this is the first CCRB complaint to which she has been a subject.
- Police Officer Benedetto Calcaterra has been a member-of-service for two years and this is the first CCRB complaint to which he has been a subject.
- Police Officer Daniel Rijos has been a member-of-service for 11 years and this is the first CCRB complaint to which he has been a subject.
- § 87(2)(g)

- Sergeant Jinchun Chen has been a member of service for 19 years and has been a subject in two CCRB complaints and five allegations, none of which were substantiated. § 87(2)(g)
- Detective Fernando Lopes has been a member of service for 15 years and has been a subject in ten CCRB complaints and 21 allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of August 17, 2023, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this incident (BR 30).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

RPBP History

- This complaint did not contain any allegations of Racial Profiling/Bias-Based Policing.

Squad: _____ 16 _____

Investigator:	_____ SI Tsigel _____	_____ SI Edward Tsigel _____	_____ 9/27/2023 _____
	Signature	Print Title & Name	Date

Squad Leader:	_____ Patrick Yu _____	_____ IM Patrick Yu _____	_____ 09/27/2023 _____
	Signature	Print Title & Name	Date

Reviewer:	_____ _____	_____ _____	_____ _____
	Signature	Print Title & Name	Date